

W. Terry Scannell, OSB No. 853220
Email: terry@scannellaw.com
7128 SW Gonzaga St. #220
Portland, Oregon 97223
Telephone: (503) 776-0806
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

CLASSIC BUSINESS GROUP, a New York
Limited Liability Company, dba **OMNI**
MOTORS.

Plaintiff,

v.

DAVID LAWRENCE PREIM, an individual,
Defendant.

Civil No. 3:17-cv-01710-SI

PLAINTIFF'S REPLY TO DEFENDANT
DAVID LAWRENCE PREIM'S
COUNTERCLAIMS

Plaintiff Classic Business Group ("Plaintiff"), by and through its attorneys, submits this Reply to Defendant David Lawrence Preim's ("Defendant") Counterclaims set forth in Defendant's Answer, With Affirmative Defenses, and Counterclaims, dated January 12, 2018 (the "Counterclaim"). To the extent that the headings, preamble, or prayer for relief in the Counterclaim require a response, Plaintiff denies the allegations contained therein. With respect to the numbered paragraphs in the Counterclaim, Plaintiff answers as follows:

//

//

REPLY TO AFFIRMATIVE DEFENSES

1.

Plaintiff denies the allegations contained in paragraph 24.

2.

Plaintiff denies the allegations contained in paragraph 25.

3.

The allegations contained in paragraph 26 are frivolous and irrelevant. Assumption of risk is not an appropriate affirmative defense to raise in this matter. Assumption of risk is a defense to a claim for negligence. Plaintiff has not alleged any claims for negligence in this case. Under New York Civil Practice Law & Rules, assumption of risk may be raised “In any action to recover damages for personal injury, injury to property, or wrongful death.” NY CPLR § 1411 (2012). None of these claims exist here. For these reasons, the Plaintiff denies the allegations in paragraph 26.

4.

Comparative fault is not an appropriate affirmative defense to raise in this matter. Comparative fault is a defense to a claim for negligence. Similar to paragraph 3 above, § 1411 of the NY CPLR applies to assumption of risk as well. Thus, it is a valid defense to claims for personal injury, injury to property, or wrongful death. For these reasons, the Plaintiff denies the allegations in paragraph 27.

//

//

//

5.

The affirmative defense of consent is related to the assumption of risk in a negligence case involving claims for personal injury, injury to property, or wrongful death. That is not the case here. For these reasons, the Plaintiff denies the allegations in paragraph 28.

6.

Plaintiff denies the allegations contained in paragraph 29.

REPLY TO COUNTERCLAIMS

7.

Plaintiff admits the allegations contained in paragraph 30.

8.

The allegations contained in paragraphs 31 to 35 are frivolous and irrelevant and therefore Plaintiff denies them.

9.

Plaintiff is without information or belief as to the specific allegations contained in paragraph 36 and therefore denies them. Furthermore, there is no Defendant's Exhibit "A" attached to Defendant's Answer.

10.

Plaintiff is without information or belief as to the specific allegations contained in paragraphs 37-38 and therefore denies them. The Plaintiff specifically denies that it "acquiesced" to the Defendant retaining the funds.

//

//

11.

As to Paragraph 39, Plaintiff denies it “acquiesced” to the Defendant retaining the funds. The Plaintiff denies that it harassed or threatened the Defendant. Furthermore, there is no Defendant’s Exhibit “B” attached to Defendant’s Answer.

12.

Plaintiff is without information or belief as to the specific allegations contained in paragraphs 40-41 and therefore denies them.

13.

Plaintiff denies the allegations in paragraph 42.

REPLY TO FIRST COUNTERCLAIM

14.

Plaintiff denies the allegations of paragraphs 43-45 and the whole thereof.

REPLY TO SECOND COUNTERCLAIM

15.

Plaintiff denies the allegations of paragraphs 46-48 and the whole thereof.

REPLY TO THIRD COUNTERCLAIM

16.

Plaintiff denies the allegations of paragraphs 49-50 and the whole thereof.

17.

Plaintiff admits the allegations of paragraph 51.

18.

Plaintiff denies the allegations of paragraphs 52-53 and the whole thereof.

AFFIRMATIVE DEFENSES TO COUNTERCLAIMS

19.

(Failure to State a Claim)

One or more of Defendant's counterclaims fail to state a claim upon which relief could be granted.

20.

(Unclean Hands)

Some or all of Defendant's equitable counterclaims are barred by the doctrine of unclean hands.

21.

(Estoppel)

One or more of Defendant's counterclaims is barred by the doctrine of estoppel.

22.

(Failure of Consideration)

One or more of Defendant's counterclaims is barred by the failure of consideration.

23.

(Waiver)

Through actions or words by Defendant, he has waived any rights to complain about Plaintiff's conduct.

//

//

//

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. Defendant take nothing by his Answer and Counterclaims;
2. The Court dismiss Defendant's Counterclaims with prejudice;
3. The court grant the relief requested by Plaintiff;
4. The Court award all of Plaintiff's attorney's fees and costs;
5. For such other and further relief as the Court deems just and proper.

DATED: February 6, 2018.

/s/ Terry Scannell
Terry Scannell (OSB #853220)
7128 SW Gonzaga St., Ste. 220
Portland, Oregon 97223
Tel: (503) 776-0806
E-mail: terry@scannellaw.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed electronically using the Court's Electronic Filing System (CM/ECF) and a copy was served via U.S. mail and email to:

David Lawrence Preim
25660 Kimberly Drive
West Linn, Or 97068-4576
dpreim@yahoo.com

DATED this 6th day of February 2018.

/s/ Terry Scannell

Terry Scannell, OSB #853220

Email: terry@scannellaw.com

7128 SW Gonzaga St., Suite 220

Portland, Oregon 97223

Telephone: (503) 776-0806

Facsimile: (503) 296-5349

Attorney for Plaintiff